

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

STATE OF OHIO,	:	APPEAL NO. C-110045
	:	TRIAL NO. B-1005911
Plaintiff-Appellee,	:	
vs.	:	<i>JUDGMENT ENTRY.</i>
KIMBERLY AUDRETCH,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.¹

Defendant-appellant Kimberly Audretch appeals the judgment of the Hamilton County Court of Common Pleas sentencing her to nine months' imprisonment after Audretch pleaded guilty to one count of felony theft. We affirm.

Audretch was indicted for theft pursuant to R.C. 2913.02(A)(1) on September 13, 2010. The state alleged in its bill of particulars that Audretch had worked for Miami Valley Maintenance ("MVM") as a payroll clerk and that Audretch had stolen approximately \$57,000 from MVM over a 14-month period by having unearned checks issued from MVM's account payable to her and her husband.

In Audretch's sole assignment of error, she contends that the trial court erred in imposing its sentence because the court failed to consider the substantial mitigating grounds for Audretch's conduct pursuant to R.C. 2929.12(C)(4). In

¹ See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 11.1.1.

reviewing Audretch's sentence, we must determine whether the sentence imposed was contrary to law, and if the sentence was not contrary to law, then we must determine whether the trial court abused its discretion in imposing it.² Although trial courts have discretion to impose a prison sentence within the statutory range for an offense, trial courts must still consider the applicable statutes.³ But the trial court need not specifically state on the record that it has considered all applicable statutes, including R.C. 2929.01 et seq., because we will presume that it did.⁴

Audretch's prison sentence was within the applicable statutory range for a felony theft offense. Nevertheless, Audretch argues that she should have been sentenced to community control instead of imprisonment for the following reasons: she was not a danger to society; she had completely cooperated with the state's investigation; she was willing to find employment to pay restitution; she had fully admitted to taking about \$60,000; and she was responsible for caring for three children and a grandchild. The record shows that these arguments were presented to the trial court by Audretch's counsel at the sentencing hearing prior to the imposition of Audretch's sentence. Moreover, we presume that the trial court considered all applicable statutes, including R.C. 2929.12(C)(4), in imposing its sentence. Therefore, we cannot hold that the trial court acted unreasonably, arbitrarily, or unconscionably in imposing its sentence.⁵ We overrule Audretch's assignment of error, and we affirm the judgment of the trial court.

² *State v. Kalish*, 120 Ohio St.3d 23, 2008-Ohio-4912, 896 N.E.2d 124, at ¶14 and 17.

³ *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, 845 N.E.2d 470, paragraph seven of syllabus.

⁴ *State v. Mathis*, 109 Ohio St.3d 54, 2006-Ohio-855, 846 N.E.2d 1, at ¶38.

⁵ *State v. Adams* (1980), 62 Ohio St.2d 151, 157, 404 N.E.2d 144.

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Further, a certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

SUNDERMANN, P.J., HENDON and FISCHER, JJ.

To the Clerk:

Enter upon the Journal of the Court on July 8, 2011

per order of the Court _____.
Presiding Judge